



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN)
ORDER AUTHORIZING MCGRAW)
COMMUNICATIONS, INC. TO PROVIDE)
LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES)
THROUGHOUT NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TE01050329

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated May 22, 2001, McGraw Communications, Inc. (Petitioner or McGraw) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange telecommunications services throughout the State of New Jersey. In addition, McGraw included a completed Staff questionnaire with its filing and responded to Staff interrogatories by letters dated November 2, 2001, November 8, 2001, April 24, 2002 and May 7, 2002. Petitioner requested confidential treatment of the financial information in Exhibit 4 of its petition. In support of this request, Petitioner submitted a motion and an affidavit dated May 13, 2001 from Francis X. Ahearn, President, stating that allowing public access to this information would allow access to competitive and strategic financial information and business plans which the company does not wish to discuss without a protective order and that could be used by competitors and potential competition against Petitioner in the marketplace.

According to the petition, Petitioner was incorporated under the laws of the State of New York on June 14, 1996. Petitioner's principal offices are located at 228 East 45th Street, New York, New York 10017. Petition at 3.

Petitioner submitted copies of its Articles of Incorporation, New York Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 4, Exhibit 1,2. May 7, 2002 letter. According to the petition, McGraw was formed to

provide local exchange and interexchange services. Petition at 1. Petitioner advised that it is currently authorized to provide facilities-based and resold local exchange and interexchange services in New York. Petition at 4, April 23, 2002 letter. McGraw advised that it has not been denied authority to provide telecommunications services in any state. McGraw advised that it is not currently negotiating any interconnection agreement.

In its petition, Petitioner advised that it seeks authority to offer local exchange and interexchange telecommunications services to residential and business customers throughout New Jersey. McGraw intends to provide service that will include (but not be limited to) local exchange access services, local exchange services to end-users of Petitioner's access line services, dedicated and special carrier access services, and interexchange services. McGraw intends to provide services using its own facilities and network elements leased from Verizon New Jersey. Petition at 6.

Petitioner requested a waiver of N.J.S.A. 48:3-7 and N.J.A.C. 14:10-1.16 which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 5. May 7, 2002 letter. Petitioner also requested permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in New York, New York. Petition at 5. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records. Petition at 5.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 6. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition will enhance the telecommunications infrastructure in the State of New Jersey and will facilitate economic development. Petition at 6.

With regard to its technical and managerial qualifications, McGraw stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 4. Petitioner submitted the professional biographies of its key personnel who, according to McGraw, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Petition at 4, Exhibit 3.

Petitioner has submitted, as evidence of its financial qualifications, two years pro forma financials for its New Jersey operations.

DISCUSSION

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat.56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed McGraw petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

Regarding the Petitioner's request for confidential treatment of the financial information submitted as Exhibit 4, the Board FINDS that the Petitioner has shown good cause that the information merits protection in order to prevent competitive harm by revealing McGraw's financial and business plans which the company does not wish to disclose without a protective order. Accordingly, the Board GRANTS the Petitioner's motion to keep confidential the

information contained in Exhibit 4. The Board also FINDS that the information is confidential under the Open Public Record Act, N.J.S.A. 47:1A-1 et seq., as amended by L. 2001, c. 404, and will therefore remain exempt after the effective date of that act, July 8, 2002.

DATED: 6/10/02

BOARD OF PUBLIC UTILITIES
BY:

(signed)
JEANNE M. FOX
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

(signed)
CONNIE O. HUGHES
COMMISSIONER

ATTEST:

(signed)
KRISTI IZZO
SECRETARY